

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	No. 08 CR 74
v.)	
)	Judge Robert W. Gettleman
NOEL MEDRINO-CLEMENTE)	

**UNOPPOSED MOTION FOR DISCLOSURE OF PROBATION'S
CRIMINAL HISTORY RECORDS AND A TWO-WEEK
CONTINUANCE OF THE SENTENCING HEARING**

Defendant NOEL MEDRINO-CLEMENTE, by the Federal Defender Program and its attorney, Rose J. Lindsay, respectfully requests that this Honorable Court order the United States Probation Office to release to the parties Mr. Medrino-Clemente's criminal history documents in preparation for sentencing. Mr. Medrino-Clemente also requests that this Court grant a two-week continuance of the sentencing hearing, which is currently scheduled for September 19, 2008, at 10:00 a.m. In support of this motion, Mr. Medrino-Clemente states as follows:

1. On May 14, 2008, Mr. Medrino-Clemente pled guilty to the indictment's charge of illegal reentry, in violation of 8 U.S.C. § 1326(a) and (b)(2). At the time of the plea, the Court ordered probation to conduct a presentence investigation.
2. During a subsequent presentence investigation interview with probation, Mr. Medrino-Clemente signed releases for probation to obtain his criminal history records, among other things.

3. The Presentence Investigation Report (“PSI”) that was prepared based on those criminal history documents attributes several convictions to Mr. Medrino-Clemente. With respect to one conviction, however, defense counsel has received conflicting information regarding whether that conviction is, in fact, Mr. Medrino-Clemente’s. (See PSI at 8, lines 160–62.) The PSI assigns three criminal history points for the conviction in question: one point for the conviction itself (PSI at 8), plus an additional two points for being under a criminal justice sentence at the time of the instant offense because of an outstanding probation warrant associated with the conviction in question. (PSI at 9–10.)
4. On August 22, 2008, defense counsel advised the Court that additional information was needed from California to determine whether the conviction in question is, in fact, Mr. Medrino-Clemente’s. This Court granted a continuance of the sentencing hearing to September 19, 2008, at 10:00 a.m.
5. Since the August 22, 2008, status hearing, defense counsel has continued to investigate the matter, but additional information is needed to resolve the issue conclusively. Defense counsel was able to review probation’s criminal history records for Mr. Medrino-Clemente in the probation office, but a more thorough review of the documents is necessary. Absent a court order, probation will not provide the parties with copies of these records, even if the records impact the guidelines calculations. Counsel therefore requests that the Court order probation

to produce copies of its criminal history records for the parties' review.

6. Counsel also requests a two-week continuance of the sentencing hearing, which is currently scheduled for September 19, 2008, at 10:00 a.m. Counsel was informed that she will receive requested documents from California on approximately September 16, 2008. With that information, and with copies of the records from probation, counsel should be able to resolve the question of the prior conviction and file a sentencing position paper as early as September 19, 2008. A sentencing hearing scheduled approximately two weeks after that would allow the government sufficient time to respond, if necessary, to Mr. Medrino-Clemente's position paper.
7. Assistant United States Attorney Megan Church was consulted regarding Mr. Medrino-Clemente's requests for copies of probation's criminal history records and a two-week continuance of the sentencing hearing. Ms. Church indicated she has no objection to the requests.

WHEREFORE, Mr. Medrino-Clemente respectfully requests that this Honorable Court order probation to turn over copies of Mr. Medrino-Clemente's criminal history records to the parties, and continue the sentencing hearing approximately two weeks, to allow the parties sufficient opportunity to address the matter in writing before sentencing.

Respectfully submitted,

FEDERAL DEFENDER PROGRAM
Terence F. MacCarthy
Executive Director

By: /s/ Rose J. Lindsay
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CERTIFICATE OF SERVICE

The undersigned, Rose J. Lindsay, an attorney with the Federal Defender Program, hereby certifies that the following document:

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was served on September 12, 2008, in accordance with Fed. R. Civ. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF), pursuant to the district court's ECF system as to ECF filers, and was sent by first class mail or by hand delivery to non-ECF filers, if any.

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